FILE COPY

SEP 7

CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 578 1311

FREDA GOODMAN,
Petitioner,

vs.

CITY OF CHICAGO,
a Municipal Corporation,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

IRVING GOODMAN,
33 North LaSalle Street,
Chicago, Illinois,
Attorney for Petitioner.

Midwest Law Printing Co., DElaware 7-6669

INDEX.

Reply Brief.

PAGE

I.

"Due Process" requires "just compensation" and deducting a fixed amount from a condemnation award for the sole purpose of making a special assessment improvement and then not making the improvement until over 19 years later and after a judgment for refund has been obtained is not "just compensation".... 2

II.

It is admitted by respondent that when petitioner obtained her judgment for refund in this case on January 22, 1947, the physical condition of Taylor Street was precisely the same as it was on February 27, 1928, when the amount of the special assessment was deducted from her condemnation award. Not a shovelful of earth had been turned nor had one inch of street been widened 4

III.

"Just compensation" was denied petitioner when the improvement was abandoned and when the City of Chicago refused to refund the moneys collected..... 5

IV.

The Taylor Street special assessment project was definitely abandoned and the Supreme Court of Illinois so found in Woodruff v. City of Chicago, 394 Ill. 542 6

V.

The failure to make the improvement as agreed and the Illinois Courts' action in condoning such failure impairs the obligation of a contract 7

VI.

Petitioner has been denied the equal protection of the laws of Illinois in violation of the 14th amendment 8

Conclusion 9

TABLE OF CASES.

Bradford v. City of Chicago, 25 Ill. 141 6

Chicago, B. & Q. Ry. Co. v. Chicago, 17 S. Ct. 581, 166 U. S. 241, 41 L. Ed. 979, 981 ..... 4, 5

Cohen v. City of Chicago, 377 Ill. 221, 36 N. E. (2d) 220 3

District of Columbia v. Thompson, 281 U. S. 25, 75 L. Ed. 677 6

Goodman v. City of Chicago, 336 Ill. App. 126, 83 N. E. (2d) 23 6

McConville v. City of St. Paul, 75 Minn. 383, 77 N. W. 993, 43 L.R.A. 584, 74 Am. St. Rep. 508 6

Rothschild v. Village of Calumet Park, 350 Ill. 330, 183 N. E. 337 2

Woodruff v. City of Chicago, 394 Ill. 542, 69 N. E. (2d) 287 ..... 2, 4, 8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 878

FREDA GOODMAN,
Petitioner,

vs.

CITY OF CHICAGO,
a Municipal Corporation,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Your petitioner, Freda Goodman, in reply to the brief of the respondent, City of Chicago, a Municipal Corporation, states that there is a clear federal constitutional question involved and that this Court should grant certiorari on the following grounds:

I.

"Due Process" requires "just compensation" and deducting a fixed amount from a condemnation award for the sole purpose of making a special assessment improvement and then not making the improvement until over 19 years later and after a judgment for refund has been obtained is not "just compensation".

The respondent, City of Chicago, argues on pages 1 and 2 of its brief, that there is no constitutional issue involved and therefore no basis for this Court assuming jurisdiction because the petitioner in February 1928, when she was awarded her compensation by the jury, permitted the sum of $1943.50 to be deducted from her award for the sole and express purpose of widening and improving Taylor Street. Respondent therefore argues that petitioner thereby waived her right to complain about not receiving "just compensation".

Such reasoning is palpably fallacious. Of course, in 1928 the petitioner permitted the City of Chicago to deduct a certain amount from the condemnation award for the sole and express purpose of widening and improving Taylor Street. This work was not even commenced until more than 19 years later and after plaintiff obtained her judgment in this case. The petitioner could not assume (or even imagine in her wildest dreams) that the City of Chicago would retain this special assessment moneys and not even commence the improvement until over 19 years later after this petitioner obtained her judgment for refund. This money deducted from petitioner was a trust fund and could only be used for the trust purpose, namely, to widen and improve Taylor Street. *Rothschild* v. *Village of Calumet Park*, 350 Ill. 330, 183 N. E. 337; *Woodruff* v. *City of Chicago*, 394 Ill. 542, 551, 69 N. E. (2d) 287.

It seems incredible that the City of Chicago should now set up its own misuse of trust funds and its own dilatory action as a defense. It was not until the City of Chicago repudiated and breached its solemn trust and abandoned the project that petitioner could raise the constitutional question of "due process" and "just compensation". If the City of Chicago had made the improvement and carried out its trust, no constitutional question could or would be raised. Indeed, if a private individual had done what the City of Chicago has done in this case, namely, taking a property owner's money for a specific purpose and then keeping the money and not performing its trust, he would long ago have been sentenced to the penitentiary for practicing a confidence game.

Respondent cites *Cohen* v. *City of Chicago*, 377 Ill. 542, 36 N. E. (2d) 743 in support of its contention that there is no constitutional question involved here. That case holds no such proposition. On the contrary *Cohen* v. *City of Chicago* expressly requires full compensation including interest. At page 232, the Supreme Court of Illinois laid down the rule:

> "When the judgments were entered, fixing the compensation to be paid for the property taken, appellants were entitled to have the *full amounts of those judgments paid to them.* They were not only entitled to have these judgments paid in full, but, under section 3 of the Interest Act, (Ill. Rev. Stat. 1939, chap. 74, par. 3,) and under the decisions of this court in *Turk* v. *City of Chicago*, 352 Ill. 171, and *Feldman* v. *City of Chicago*, 363 id. 247, they were entitled to receive interest on said judgments at the rate of five per cent per annum from the date the judgments were entered until they were paid in full." (Italics ours.)

We submit that the statement of this court in *Chicago, Burlington & Quincy Ry. Co.* v. *Chicago,* 17 S. Ct. 581, 166 U. S. 241, 41 L. Ed. 979, at page 986, is most germane as to whether a constitutional question is involved:

> "In our opinion, a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the 14th Amendment of the Constitution of the United States and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument."

II.

It is admitted by respondent that when petitioner obtained her judgment for refund in this case on January 22, 1947, the physical condition of Taylor Street was precisely the same as it was on February 27, 1928, when the amount of the special assessment was deducted from her condemnation award. Not a shovelful of earth had been turned nor had one inch of street been widened.

The City of Chicago further argues on page 2 of its brief that the factual situation is different from what it was when *Woodruff* v. *City of Chicago,* 394 Ill. 542, 69 N. E. (2d) 285, was decided in 1946. But nowhere is that difference pointed out. There is and was no such difference.

We state to this court as an uncontradicted fact that the physical condition of Taylor Street was the same when summary judgment was entered in January 1947, as it was when *Woodruff* v. *City of Chicago* was decided by the trial court in 1944 (Tr. 2, 13).

In fact, the City of Chicago in its answer (Tr. 8) sets up the Statute of Limitations as a defense. Not one single inch of street had been widened and not one shovelful of earth had been moved when petitioner herein obtained her judgment. Not one bit of work was done for over 19 years.

III.

"Just compensation" was denied petitioner when the improvement was abandoned and when the City of Chicago refused to refund the moneys collected.

Respondent argues on pages 2 and 3 of its brief that the claim that the constitutional provisions of "due process" and "just compensation" were not made until petitioner made her motion for summary judgment in the trial court (Tr. 9).

Obviously, until the City refused to make the refund no such claim could be made. When the City of Chicago filed its answer stating it would not refund petitioner the balance of her condemnation award, then, and then alone, did the constitutional issue arise. Petitioner raised the constitutional issue in the motion for summary judgment, in the Appellate Court of Illinois requesting that the case be transferred to the Supreme Court, because a constitutional issue, "just compensation", was involved, (Tr. 19-20) and again in the Supreme Court of Illinois (Tr. 29). At every stage of the case did petitioner raise the constitutional question.

Respondent further argues on page 3 of its brief that "just compensation" does not come within the scope of the 14th amendment. This contention is palpably erroneous and is directly contrary to *Chicago, B. & Q. Ry. Co.* v. *Chicago,* 17 S. Ct. 581, 166 U. S. 241, 41 L. Ed. 979.

It is difficult to comprehend the ethics or morality of respondent's reasoning that taking money for a particular purpose and then not carrying out the purpose is legitimate and honorable conduct. Performing the work more than 19 years later and after petitioner obtained a judgment for refund, to our mind, does not cure this wrongful conduct.

IV.

The Taylor Street special assessment project was definitely abandoned and the Supreme Court of Illinois so found in Woodruff v. City of Chicago, 394 Ill. 542.

On pages 4-6 of its brief, City of Chicago argues that it never really abandoned the improvement. The answer to this contention is simple.

First, a delay of 19 years is an abandonment as a matter of law. In *Bradford* v. *City of Chicago,* 25 Ill. 141, a delay of 4 years was held to be an abandonment. In *McConville* v. *City of St. Paul,* 75 Minn. 383, 77 N. W. 993, 43 L.R.A. 584, 74 Am. St. Rep. 508, 6 years was held to be an abandonment. In *District of Columbia* v. *Thompson,* 281 U. S. 25, 75 L. Ed. 677, 14 years' delay was held to be an abandonment. *A fortiori,* a delay of nearly 19½ years is certainly an abandonment.

Second, the Appellate Court of Illinois in its own opinion admitted that the special assessment proceeding had been abandoned (Petition for Certiorari, page 15). The Court said in this case in *Goodman* v. *City of Chicago,* 336 Ill. App. 126, 83 N. E. (2d) 23, at page 132:

"*Because the special assessment proceeding for paving was abandoned,* it does not follow that the money collected for the widening was not used." (Italics ours.)

Even the Appellate Court was in doubt as to its conclusion. For the court said (page 14 Petition for Certiorari):

"There may be room for argument on the *Goodman* case."

The improvement was commenced and completed after petitioner obtained her judgment from Motor Fuel Tax funds supplied by the State of Illinois and not from petitioner's money at all. (Respondent's Brief, page 5.) Thus, petitioner is paying twice for the improvement—commenced 19 years late—as a taxpayer and by deducting from her condemnation award. If getting the improvement over 19½ years late is proper and constitutional then a municipality may wait 30 or 40 or 50 years before it decides to use moneys it collects for a particular purpose for *that* purpose. Respondent's contention is absurd and would not be countenanced by this or any other court if a private individual were to do what the City of Chicago did here.

This special assessment improvement as contemplated was definitely and irrevocably abandoned.

V.

The failure to make the improvement as agreed and the Illinois Courts' action in condoning such failure impairs the obligation of a contract.

The City of Chicago and this petitioner had a definite contract that the City would make the improvement within a reasonable time and petitioner permitted the City of Chicago to deduct a certain amount from her condemnation award for this purpose only. The City of Chicago refused to carry out its agreement and the Illi-

nois Courts have said in this case that the City does not have to complete the improvement and it may still retain the trust moneys committed to it for a specific purpose. In effect, the Illinois courts have said that the City of Chicago may breach a trust or contract with immunity and impunity.

We submit that this is state action which violates Section 10, Article 1 of the Constitution.

VI.

Petitioner has been denied the equal protection of the laws of Illinois in violation of the 14th Amendment.

In *Woodruff* v. *City of Chicago,* 394 Ill. 542, 69 N. E. (2d) 287, decided in September 1946, the Illinois Supreme Court held that this same Taylor Street improvement had been abandoned and allowed Woodruff to recover the moneys paid by him to the City of Chicago as a special assessment.

Two years later, with the same street, the same physical condition of the street, the same set of facts, this petitioner is denied recovery. If the City of Chicago had during the interim from the *Woodruff* decision to the date judgment was entered in this case done one dollar's worth of work on the improvement, there might be some merit to respondent's contention. But *nothing* was done until after judgment was entered.

Certainly, the same set of facts and the same legal situation requires the same decision. Surely, a court cannot decide a case one way and an identical case another way without stating that it was reversing itself. In this case, the Appellate and Supreme Courts of Illinois deprived petitioner of her basic constitutional rights al-

though another taxpayer was given his rights. "Equal protection" means "equal protection" to all persons in the same situation.

CONCLUSION.

This court has jurisdiction of this cause because four fundamental constitutional principles have been violated, to-wit, "due process", "just compensation", "impairment of contract", and "equal protection".

If the City of Chicago can breach a trust and keep moneys that do not belong to it, then any private individual may do the same. A grave injustice has been done; a vital fundamental principle of law has been ignored; important constitutional doctrines have been violated.

Permitting the Illinois rulings to stand would mean that municipalities could deprive persons of property with immunity and would establish a precedent for collecting without performing. If this court grants certiorari we are confident we can then show conclusively how far-reaching are the consequences of the decision in this case.

Hence for the reasons assigned in our petition for certiorari and in this reply brief, it is earnestly urged that this court grant the petition for a writ of certiorari.

Respectfully submitted,

IRVING GOODMAN,
33 North LaSalle Street,
Chicago, Illinois,
Attorney for Petitioner.